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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE, et al.,)	
)	
Plaintiffs,)	Case No. 2:15-cv-01045-RFB-PAL
)	
vs.)	Las Vegas, Nevada
)	November 17, 2015
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	STATUS CONFERENCE
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
THE HONORABLE PEGGY A. LEEN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: See Next Page

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1 LAS VEGAS, NEVADA; TUESDAY, JULY 28, 2015; 10:02 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: Good morning. Please be seated.

5 COURTROOM ADMINISTRATOR: This is the time set for the
6 status conference in 2:15-cv-1045-RFB-PAL, Le versus Zuffa, LLC.
7 Counsel, your appearances please.

8 MR. DELCOLLO: Michael Dell'Angelo from the law firm of
9 Berger and Montague.

10 MR. MADDEN: Patrick Madden from Berger and Montague on
11 behalf of the plaintiffs.

12 MR. SPRINGMEYER: Adam Springmeyer, Wolf Rifkin, for
13 the plaintiffs.

14 MR. COVE: Good morning, Your Honor. Doug Cove on
15 behalf of Zuffa, LLC.

16 MS. LYNCH: Good morning. Marcy Lynch from Boies
17 Schiller & Flexner on behalf of Zuffa, LLC.

18 MR. WILLIAMS: Good morning, Your Honor. Colby
19 Williams of Campbell and Williams on behalf of Zuffa.

20 MR. HENDRICK: Good morning, Your Honor. Kirk
21 Hendrick, Chief Legal Officer for UFC.

22 THE COURT: All right. We're on calendar for a status
23 and dispute resolution conference which I set on October 29th.
24 We only have a half an hour today, so we need to make as much
25 progress as possible. Prospectively, I'll leave some more time

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1 for you so that we have a little more than 30 minutes, but -- so
2 let's be efficient this morning.

3 And as an initial housekeeping matter, there are two
4 stipulations, Docket No. 191 and 195, which the District Judge
5 just referred to me. So I was going to reject them and send
6 them back to you, but I'll go ahead and approve your two
7 stipulations if you submit, please, a corrected image. Please
8 comply with Local Rule 6-2 which requires -- no judge wants to
9 sign a blank piece of paper with an "It is so ordered" and their
10 name on it. Okay? So please don't do that.

11 It's one of those clerical functions. It's been a
12 corrected image that comports with that requirement, and both of
13 these stipulations will be approved so we can get that out of
14 the way. Okay?

15 MR. DELL'ANGELO: Thank you, Your Honor.

16 THE COURT: And so I got a courtesy copy of your joint
17 status report that was delivered at 4:40 yesterday afternoon.
18 So I have been able to read it, but it contains a lot of
19 information and, of course, I haven't been able to study it. So
20 you have been making some substantial progress. You have a
21 number of outstanding ongoing discussions that have to do with
22 ESI preservation and the number of appropriate custodians for
23 what searches and disputes concerning the relevant time period
24 for various production requests that have been made.

25 So let me hear first from counsel for the plaintiff to

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1 bring me up to speed. You were working on this until about noon
2 yesterday when I guess this was filed. Where are you, if at
3 all, in moving forward on the disputes that are outlined in the
4 status report, all 63 pages of it?

5 MR. DELL'ANGELO: Good morning, Your Honor. Thank you,
6 Your Honor.

7 And I recognize that it is a long and complicated
8 document. We've been working hard to try to find common ground
9 on issues, and there are a number of issues that are reflected
10 in the status where we have reached common ground.

11 THE COURT: And so you're, Mr. ...

12 MR. DELCOLLO: Dell'Angelo, Your Honor.

13 THE COURT: That's what I thought, but just because I
14 don't have a court reporter, you need to identify yourselves so
15 that anyone who prepares the transcript will know who's
16 speaking.

17 MR. DELCOLLO: Understood. Thank you, Your Honor.

18 THE COURT: All right.

19 MR. DELCOLLO: But there are several key kind of
20 overarching issues where the parties have been unable to reach
21 agreement and as a result, you know, believe that it was
22 necessary at this time to submit them to Your Honor.

23 And in light of the time that we have, I'd like to kind
24 of cut straight to those issues without a lot of wind up. The
25 key issues, Your Honor, are the relevant time period that are

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1 applicable to discovery. With respect to certain areas of
2 discovery and a number of the requests, we have reached
3 agreement. There are certain categories where the parties have
4 been unable to reach agreement, and they break down, excuse me,
5 into a couple of groups.

6 The first is with respect to contracts from the
7 fighters and contract files from the fighters.

8 THE COURT: Right. And they've agreed to give you all
9 of the contracts without any historical limitation or date
10 cut-off that are part of the putative class.

11 MR. DELL'ANGELO: Correct.

12 THE COURT: And they've agreed to give you all of the
13 contract files for the documents that were electronically
14 scanned, but not all of the contract files that are in the
15 600,000-page universe.

16 MR. DELL'ANGELO: Right. And as we understand it, of
17 that 600,000-page universe, that in order to meet the request as
18 Zuffa has agreed -- to the extent that Zuffa has agreed, it
19 needs to review approximately one half of those 600,000 pages.
20 And we also understand that the scanning project that was
21 undertaken just in the regular course of business to collect
22 contracts that Zuffa has agreed to produce is not one that Zuffa
23 can certify is complete.

24 And this is -- this is an exceptionally important issue
25 from the plaintiffs' perspective because, first, what we're

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1 talking about is the -- what we see as a relatively modest
2 incremental burden of just reviewing the other half of those --

3 THE COURT: Double isn't incremental.

4 MR. DELL'ANGELO: Okay. Well, the -- this is an issue
5 with respect to the contracts I think, Your Honor, that's
6 vitally important to the case. I mean, the scheme as we allege
7 it began in 2006. And the contracts -- the evolution of these
8 contracts and how the clauses were inserted and evolved over
9 time provide a -- the look-back as to how this scheme evolved
10 and give the historical perspective that's really necessary in
11 an antitrust case to understand where the scheme started. And
12 that's the reason --

13 THE COURT: You're getting all of the historical,
14 however, with respect to the putative class. The question is
15 whether the additional 300,000 hard copy are relevant and are
16 proportional for the purposes for which you're seeking the
17 contracts for the nonclass members. So I'd like you to go to
18 the heart of that, if you could.

19 MR. DELL'ANGELO: Right. So what -- what we're trying
20 to understand, Your Honor, is how these contracts evolved over
21 time.

22 THE COURT: Which set of contracts are we talking about
23 now?

24 MR. DELL'ANGELO: Pardon?

25 THE COURT: With which set -- all contracts?

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1 MR. DELL'ANGELO: The fighter contracts. This is --
2 this issue where we're asking --

3 THE COURT: No, I understand that, but you're talking
4 about nonclass member contracts?

5 MR. DELL'ANGELO: Yes. Right.

6 THE COURT: And you want them in perpetuity for as long
7 as they've kept them?

8 MR. DELL'ANGELO: We want them back -- we're asking for
9 them back to the year 2000, Your Honor, because the -- these
10 fighter contracts are one of the sort of most important aspects
11 of the discovery in the case. And it's vitally important from
12 our perspective to understand how those contracts evolved over
13 time. And simply getting the set of fighter contracts from the
14 putative class don't tell us how those contracts --

15 THE COURT: That part I understand.

16 MR. DELL'ANGELO: Okay.

17 THE COURT: And I understand you want others. And I
18 understand --

19 MR. DELL'ANGELO: Yes.

20 THE COURT: -- they're willing to give you others.

21 MR. DELL'ANGELO: Right.

22 THE COURT: The question is, why isn't the huge
23 number -- you only have 940 fighters that are putative class
24 members, correct?

25 MR. DELL'ANGELO: That's correct, Your Honor.

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1 THE COURT: All right. And so of the 300,000 pages of
2 document or 300,000 documents, not pages of documents, documents
3 that they propose to produce to you because that information is
4 more readily accessible and searchable, why isn't that an
5 adequate universe for you to make out your claims concerning the
6 historical evidence?

7 MR. DELL'ANGELO: Because it -- as I understand it --

8 THE COURT: I understand it's not complete.

9 MR. DELL'ANGELO: Right.

10 THE COURT: I get that.

11 MR. DELL'ANGELO: Because, as I understand it, Your
12 Honor, those 300,000 pages of the 600,000 are limited in Zuffa's
13 proposal to the contracts of the proposed class members. Right.
14 So what it doesn't do is give us a complete picture, looking
15 back in time, of how those contracts evolved and how the company
16 used them and inserted clauses or didn't, as the case may be,
17 and changed them over time as the scheme evolved and the scheme
18 was implemented.

19 And so -- and just to be clear. As I understand it,
20 the 600,000 is pages, not documents. And the hesitation that we
21 have and the deep concern that we have is the electronic file,
22 you know, we have been told in the meet-and-confer process is
23 one that Zuffa can't certify is a complete set of contracts, you
24 know, historically. And if you take a step back, I think part
25 of what we considered, Your Honor, is in the regular course of

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1 business Zuffa undertook to create a set of contracts, right,
2 and that's the electronic file that they'd like to give to us.

3 So it seems that when --

4 THE COURT: You're concerned about what the winnowing
5 process consisted of and whether you're going to get selected --

6 MR. DELL'ANGELO: Well, right, and it's a process that
7 they undertook in the regular course of business, but now in the
8 discovery process, they've taken a position that it would be too
9 burdensome to actually provide -- to go essentially through the
10 same set of documents and provide a complete set. So I don't --
11 in light of what the company has undertaken to do on its own in
12 the regular course of its own business, seems to me that going
13 through -- as they go through 600,000 pages, you know, seriatim,
14 taking out as you go through the one here and the one there that
15 relate to a fighter, it on some levels seems like it would be
16 more efficient to just go through them seriatim as they did in
17 the regular course of business and just provide a complete set.

18 THE COURT: Let me hear from opposing counsel on this
19 issue. So we'll take them a bite at a time. And who will be
20 addressing the plaintiffs' -- excuse me -- the defendants' --

21 MR. COVE: Me, Your Honor. John Cove from Boies
22 Schiller & Flexner.

23 THE COURT: Mr. Cove, what does the 600,000 -- first of
24 all, is it documents or pages?

25 MR. COVE: It's pages.

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1 THE COURT: Okay.

2 MR. COVE: It's pages of hard-copy documents. And we
3 have gone through and estimated under our proposal how many of
4 those would need to be reviewed in order to --

5 THE COURT: And what do those 600,000 pages consist of?

6 MR. COVE: They consist of fighter files, sponsor
7 files, merchandise files, licensing files, acquisition files,
8 and corporate documents, oh, and venue and event files. So it's
9 a smorgasbord of things that are in there.

10 THE COURT: That's a preliminary collection of the
11 documents that you believe are relevant?

12 MR. COVE: Those are the -- those are the 300 --
13 approximately half of them, of those 300,000, we believe fall
14 within what we've agreed to do, which is the fighter files for
15 all of the class members, the venue and sponsor files back to
16 2008, merchandise files back to 2008. Not all of those will
17 ultimately be responsive, but those -- those boxes fall within
18 the time frame and the subject --

19 THE COURT: No, but I'm trying to understand how it is
20 that you arrived at the universe of the collection. And you
21 have identified 600,000 pages of documents in the case that are
22 potentially relevant and discoverable to the requests that have
23 been made in this case?

24 MR. COVE: Well, no, there's 600,000 pages in various
25 places in storage. Not all of those are relevant, but to

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1 actually look through them and determine what they are --

2 THE COURT: You're talking about the process of
3 reviewing them to determine whether they contain relevant
4 documents?

5 MR. COVE: Precisely.

6 THE COURT: And you don't want to review all 600,000
7 pages of the hard-copy documents because it's inefficient?

8 MR. COVE: Yes. Well, Mr. Dell'Angelo referenced a
9 modest incremental burden. Well, everything is incremental
10 here, and we're producing a huge number of electronic documents.

11 THE COURT: Are the files likely to have privileged
12 materials in them?

13 MR. COVE: Yes, some of -- some of them, they have
14 contract files for the -- fighter files, I should say, which are
15 files that contain the contracts, sometimes extension letters,
16 sometimes attorney notes relating to the contracts, things that
17 are important to the contract. So what we've offered to do is
18 for all class members we'll search those entire class files, and
19 to the extent they have privileged documents, we'll log them --
20 withhold them and log them. And that gives a cross-section of
21 9 -- approximately 940 members of the collateral -- 940 people
22 in that category. They're not all members of the class, but
23 we're -- you have a date of anybody who fought after -- after
24 the statute period started to run.

25 THE COURT: December 16th, 2010, is the date you keep

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1 telling me.

2 MR. COVE: That's exactly right, yes.

3 So we've got all those. And in the course of
4 negotiations they said, That is not enough. We said, Well, we
5 do have a contract -- electronic-filed contracts that have been
6 scanned which were mainly just the contracts. They were scanned
7 in the normal course of business for business purposes and --

8 THE COURT: Are these fighter contracts or they're also
9 vendor and sponsor --

10 MR. COVE: No, these are the fighter contracts.

11 THE COURT: Okay.

12 MR. COVE: And we'll be -- because of the burden of
13 reviewing those things that have already been scanned and
14 typically --

15 THE COURT: Correct, but how did you -- how did you
16 select which of the 600,000 pages of documents would be
17 electronically scanned? What was the criteria that was used?

18 MR. COVE: That was a business project that occurred
19 before the litigation which was --

20 THE COURT: Okay. But what was --

21 MR. COVE: -- ostensibly to try to get a handle on the
22 documents and store them in a more efficient manner. It's
23 important to have the fighter contracts because they contain
24 grants of rights that may be used in the future. If they
25 replayed a bout that occurred in 2005, it's good to have the

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1 contract for that bout.

2 THE COURT: So they were done for the business purpose
3 of making sure that you were getting your contractual rights?

4 MR. COVE: Right, making sure we had a record of those
5 contractual rights, but we know that the process was not perfect
6 and that not everything got scanned, which is what we have
7 been -- you know, told them in the meet-and-confer process,
8 though, we thought it would -- they haven't been self-selected
9 to keep anything out. What we're giving them is a combination
10 of all of the class members, plus anybody else that was in this
11 file that goes back.

12 In the class members, the plaintiffs have people that
13 fought back into the '90s before Zuffa existed. So it gives
14 them a good cross-section of the history of these contracts.
15 And in our view, it's adequate and the so-called modest
16 incremental burden is not modest. It's time and labor intensive
17 to go through hard-copy documents one by one. To put it into
18 perspective, there's about 300 pages in a banker's box. So
19 that's 100 extra boxes --

20 THE COURT: I've done that pick-and-shovel work. You
21 don't need to tell me about it.

22 MR. COVE: Okay. So it's a lot of documents in
23 addition to the 300,000 we're already doing, in addition to all
24 of the electronic information that is going to have to be
25 searched and reviewed for privilege. If this were the only

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1 thing that were in dispute, it wouldn't be the worst thing, but
2 everything we have is incremental to what we're already doing
3 which is already going to cost -- I'm not going to state a
4 figure because I don't know right now, but an enormous amount of
5 money.

6 We've given -- we're offering them electronically all
7 of the key custodian -- you know, all of the important decision
8 makers in the company, most important decision makers with
9 regard to the issues in the case, and this additional burden is
10 simply not worth it at this time.

11 THE COURT: Would you be amenable to allowing all
12 600,000 pages to be available for spot-checking by the
13 plaintiffs so they could satisfy themselves that the 300,000 is
14 an appropriate cross-sample?

15 MR. COVE: We wouldn't allow them open access to
16 hard-copy documents that might contain privileged material, no,
17 but we could think about some other sampling. And we could
18 produce what's scanned and --

19 THE COURT: I know -- you've offered to do that, and I
20 understand that. And now -- it always gives the other side
21 angst when they don't get everything.

22 MR. COVE: No, I understand it. And, actually, when
23 they have the scanned material, they can see how far back in
24 time it goes and whether it satisfies their needs and how many
25 contracts of the -- of all of these class members that go back

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1 in time and go back as far as they need.

2 THE COURT: All right. I'm going to adopt the
3 defendants' position with respect to these contract files at
4 this time without prejudice for plaintiffs to raise an issue
5 that you need them supplemented, or after you've had an
6 opportunity to review them to see what they contain, to see if
7 it appears that there are holes or there are incomplete -- I
8 understand they're incomplete in the sense you're not getting
9 them all. The question is, you know, you also have to be
10 careful what you ask for sometimes.

11 So the procedure that defendants propose in this case
12 seems to me to be reasonable and gives you some fundamental
13 understanding of the types of documents of what exists in the
14 files and so forth. And in order to get this process moving
15 forward, I will allow that again without prejudice for
16 plaintiffs to raise this issue again if upon review of the
17 actual documents once you get them you have identified some
18 holes or some reason to believe that they're not meeting your
19 discovery needs. Okay?

20 All right. Issue No. 2, the next set of issues with
21 respect to time frame have to do with -- well, you raise it in
22 the issue of importance to you.

23 MR. DELCOLLO: Thank you, Your Honor.

24 THE COURT: And this is again Mr. Dell'Angelo for the
25 record.

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1 MR. DELL'ANGELO: Yes, it is, Your Honor, Michael
2 Dell'Angelo.

3 And I -- you know, I guess I just say, if I may, Your
4 Honor, the adoption of defendants' proposal with respect to the
5 contracts does give me some pause because I think what we heard
6 is that there's an acknowledgment that there are potentially
7 relevant documents in there that are not -- simply not going to
8 be looked at. And the contracts of fighters who are not in the
9 proposed class are --

10 THE COURT: I'm not boxing you out of an opportunity to
11 have a second pass at these, but what I am suggesting is look at
12 what you get in the first iteration and both sides will be in a
13 better position to evaluate and to advise me about what you
14 legitimately need that you haven't received. So I want to make
15 that clear because in big, complex cases like this we can spend
16 months and months going through this process before you get a
17 single page of documents, and that's not going to happen.

18 MR. DELL'ANGELO: Well --

19 THE COURT: And if they underproduce and if they are
20 too obstreperous in not giving you what you legitimately need,
21 they're going to spend more time and money than if they gave it
22 to you in the first instance. And they're smart enough to know
23 that.

24 MR. DELL'ANGELO: I understand that, Your Honor. And
25 that's, frankly, what we were trying to avoid. And I guess I --

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1 I just -- I have tremendous pause at this point if what is being
2 represented is --

3 THE COURT: I get it. You don't like the order, but
4 that's it. Okay. Let's move on.

5 MR. DELL'ANGELO: The next issue, Your Honor, is with
6 respect to the -- for the areas of discovery where there's not
7 already an agreement, and we have an agreement with respect to a
8 number of the other requests, the relevant time period. And
9 what we're proposing for noncontractual documents, except for
10 those areas where there's an agreement, is that the relevant
11 time period should reach to January 1, 2005. And that is a
12 little less than two years before the inception of the scheme as
13 it's alleged.

14 If you look at paragraph 129 of the complaint --

15 THE COURT: Right. You're alleging the scheme began in
16 December of 2006.

17 MR. DELL'ANGELO: That's right.

18 THE COURT: And so you're asking for two years
19 backwards for most category of documents.

20 MR. DELL'ANGELO: That's correct, Your Honor.

21 And, you know, in an antitrust case like this there's
22 tremendous precedent, which we've cited in our status report to
23 you, for, you know, some lookback prior to the inception of the
24 scheme. Zuffa is very focussed on the class period as a time
25 when the relevant time period should begin, but the reality in

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1 these cases and what the case law recognizes is that the
2 demarcation point really needs to be the scheme itself because
3 there is this lookback that we talked about in trying to
4 understand, you know, how the scheme was implemented and how it
5 evolved.

6 And, you know, the documents that sort of form that and
7 go into the time that the scheme began and form kind of the
8 evidence that one looks at historically to understand what the
9 fore period looked like and then the during and then to the
10 extent that there's an after. We don't really have an after
11 because we're alleging that there's a multifaceted ongoing
12 scheme.

13 So I think, frankly --

14 THE COURT: But you did reach an agreement that June
15 30th of this year is the cut-off for prospective plaintiffs.

16 MR. DELL'ANGELO: That's correct because there needs to
17 be a cut-off at some point, Your Honor. And, you know, we're
18 trying to find ways to compromise and, you know, our document
19 requests were served in April of 2015. The stay was lifted in
20 September. I mean, we're trying very hard to sort of move this
21 along. And I think that that January 1, 2005, cut-off is a
22 reasonable one in the context of this case.

23 And I point out there are other areas where the
24 defendant has agreed to 2005. So if you look at documents
25 regarding acquisitions and then even if you look at the

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1 agreement that we have with respect to unionization, which is
2 Request No. 44, as I understand it, defendants' position in the
3 status is that they're willing to go back to 2000. I mean,
4 there's precedent for these time periods, but I think the case
5 law is the most important which establishes that, you know, the
6 nature of the time period that we're asking for here is
7 reasonable and appropriate.

8 THE COURT: Right. So you want a uniform time period
9 of January 1, 2005, through June 30th of 2015 for all categories
10 of documents aside from the fighter contracts?

11 MR. DELL'ANGELO: That's correct, Your Honor, with
12 the -- with the exception of a few instances where we've reached
13 agreement. So, for example, with respect --

14 THE COURT: No, I'm just talking about the matters that
15 are in dispute.

16 MR. DELL'ANGELO: Yes. I just wanted to be clear.
17 There are some periods where we decided to make it 2010 for
18 organizational documents, that sort of thing, that a shorter
19 period will do.

20 THE COURT: All right. So let me hear from opposing
21 counsel. Mr. Cove?

22 MR. COVE: Thank you, Your Honor.

23 Yes, as noted, we've agreed to give contract files back
24 as far as they go in time because that's the core of the case.
25 We've agreed to provide the acquisitions back to 2005 because

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1 that's something that they've talked about. So the real issue
2 here is their overbroad requests for all documents relating to
3 contracts with merchandisers, with sponsors, with venues, with
4 TV broadcasters.

5 We think that, you know -- for example, let's take the
6 TV broadcasts. We're going to give them the contracts with --
7 with Fox Now and with Spike TV in the past. And those contracts
8 are, you know, substantially mutually exclusive. So to keep
9 going -- the issue is whether having an exclusive contract with
10 Fox or with Spike TV is actually foreclosing on the competitors
11 from the hundreds of other TV venues or outlets who are out
12 there.

13 It's a similar analysis with regard to venues and with
14 regard to sponsors and with regard to merchandisers. And these
15 are -- there are tremendous volumes of documents, especially,
16 again, in the hard-copy documents that go back to 2000 -- before
17 2008.

18 We're giving them some time -- we're offering them some
19 time before the -- before the statute run -- ran, but, again,
20 this would require us to go back and look at essentially three
21 additional years of all of these contracts for all of these
22 sponsors and all of these merchandisers, all of these venues,
23 which are voluminous and which they have not limited to the
24 contract files, but to all of the documents relating to the
25 contracts. And we just think it's too much. And it's -- the

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1 burden is disproportionate at this point for the relation of
2 those allegations to the complaint. They're going to get all of
3 this --

4 THE COURT: And, yet, most of the key custodians don't
5 have ESI dating -- Mr. White I think is the one that has back to
6 2010, and the rest of them don't have ESI in --

7 MR. COVE: Let me be clear on that because I'm not sure
8 it was clear from -- I hoped our part was clear, but I'm not
9 sure the whole discussion was clear.

10 What we've provided with regard to the time frames were
11 the documents that were -- that were maintained on e-mail
12 servers and the time frame when the litigation holds were
13 issued, what documents were there then. That is not all of ESI
14 that those custodians have. They still have shared drives.
15 They still have hard drives on their lap tops or desk tops.
16 They still have hard-copy documents. None of those volumes or
17 time frames relate to those sources of ESI.

18 That being said, we're not contending that the ESI from
19 2008 to 2005 is that voluminous. What we're contending is that
20 that -- having to go through all of those hard-copy files and
21 these venue files on events that happened eight, 10 years ago is
22 not relevant or probative.

23 One problem here is Zuffa, unlike, say, the NFL, at
24 some point was its own merchandiser and would contract with
25 manufacturers to have UFC merchandise: coffee cups and t-shirts

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1 and pencils. And then they would sell it on a retail basis.
2 All of that stuff is covered by their subpoena. They had a deal
3 with Penney's at one time to -- a co-promotion deal with
4 Penney's to promote UFC apparel. There's no way in the world
5 that a co-promotion deal with Penney's has any anticompetitive
6 effect or is relevant to a monopoly case.

7 But having to look through all of those documents, it's
8 just -- it's going to be enormously burdensome and unnecessary.
9 We've offered and we have a thought on the acquisitions, on the
10 fighters, the things that really need to go back in time, but to
11 have this tremendous searching through all of this paper just to
12 find things that are of marginal relevance is not worth it.

13 And, you know, if there are particular sponsors that
14 they are interested in, say, the video games or somebody like
15 that, we can do those kinds of searches, but to do the whole
16 gamut of everything back to that time is burdensome and wasteful
17 in our view.

18 THE COURT: I'm adopting the plaintiffs' position with
19 respect to this issue and the documents as to which there are
20 still agreement shall be produced from the time period January
21 1st, 2005, forward.

22 Mr. Dell'Angelo, your next issue?

23 MR. DELL'ANGELO: Thank you, Your Honor.

24 I think the next issue is kind of a global issue, and
25 it really relates to the identification of custodians. So what

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1 we have been working hard to do and have been unsuccessful at is
2 trying to identify --

3 THE COURT: Well, you've agreed on 16.

4 MR. DELL'ANGELO: Yes, we have in theory, Your Honor.
5 The problem that we're having is identifying a universe of
6 custodians from which to choose.

7 THE COURT: They've given me a pretty good list of how
8 it is that they went about in identifying the custodians that
9 they thought had the most -- they've given you the department
10 heads of the -- they've given you the CEO's and the decision
11 makers. They've given you the chief operating officers of the
12 various departments over the various vendors, suppliers, TVs,
13 and so forth that go to the heart of what you're arguing about
14 here to the extent of their monopoly.

15 MR. DELL'ANGELO: Well, I'm not sure that I share that
16 sort of understanding of what we've received, so...

17 THE COURT: But who knows who has the most relevant
18 documents besides you on behalf of your client?

19 MR. DELL'ANGELO: Well, so let me answer it this way.
20 One of the ways that we thought that we could work through this
21 issue was by -- was through a limited 30(b)(6) deposition.

22 THE COURT: You want to do an initial discovery before
23 you do the discovery?

24 MR. DELL'ANGELO: And so the response that we got, and
25 I think it's reflected in their papers, is it would be too

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1 difficult for us to figure out who worked for us during the
2 relevant time period. So that tells me that if Zuffa doesn't
3 know who worked for it during the relevant time period such that
4 it could, you know, address those issues at a 30(b)(6)
5 deposition, that the process of identifying all of the
6 potentially relevant custodians wasn't done at the level that it
7 should have been done.

8 And I think there's a couple of things that are
9 important to put it into perspective, and I think these things
10 are fairly clear, you know, between the parties. That the
11 organizational charts that exist for 2015, we understand are
12 complete. We also received partial organizational charts for
13 the period from years 2008 through 20 --

14 THE COURT: And I understand that, and it's very clear
15 that the defendants are not going to tell you that they're
16 accurate or that they really reflect what people really did.
17 And that causes you some pause for concern.

18 MR. DELL'ANGELO: And in addition to that, Your Honor,
19 we have no information that predates 2008. And so if we take
20 into perspective the order that you just issued with respect to
21 the other discovery and allowing that to go back to 2005, we now
22 have this three-year gap where I have no insight. And as those
23 incomplete organizational charts --

24 THE COURT: Well, you know who the people at the top
25 are. You don't know the people in the intermediate or lower

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1 tiers.

2 MR. DELL'ANGELO: That's right. And there are all
3 sorts of people for whom we've made it very clear we're not
4 interested in knowing about really. So --

5 THE COURT: And you've identified an additional 28
6 custodians and you're talking with them about getting some
7 information about who they are.

8 MR. DELL'ANGELO: Right.

9 THE COURT: And so you got those from the
10 organizational charts?

11 MR. DELL'ANGELO: We did, Your Honor.

12 THE COURT: And you got -- you basically took what the
13 description was and said, These look like the people that might
14 have information that we need.

15 MR. DELL'ANGELO: That's correct, Your Honor.

16 THE COURT: And they've agreed to provide additional
17 information for you.

18 MR. DELL'ANGELO: With respect to those people. What
19 they have not agreed to do is give us any perspective on who was
20 employed by the company from 2005 to 2008 and a more complete or
21 reliable list of people from --

22 THE COURT: Sure. But isn't that what usually happens?
23 Again, you know, in the...

24 Especially in complex cases, you start and then you
25 learn and then you find out if you need more or if you need to

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1 fill in the holes.

2 MR. DELL'ANGELO: Right.

3 THE COURT: But to expect to understand the universe
4 before you start doing what I call the pick-and-shovel work is
5 really unrealistic and is not very efficient from my point of
6 view. And I'm willing to allow you to disabuse me of that
7 notion, but you usually start by taking some depositions. You
8 ask those fundamental questions of the people that presumably
9 have knowledge. You know, who's the go-to person on this
10 subject matter? Who's the one you rely on for this information?

11 And if you uncover additional names or -- so that you
12 can focus and tailor discovery and requests for the custodians'
13 reviews on those people, that's perfectly reasonable. But to
14 across the board require them to tell you from day one who did
15 something in 2005 does not seem to me to be reasonable.

16 MR. DELL'ANGELO: So, Your Honor, here's the issue that
17 we're struggling with is Zuffa has repeatedly represented and
18 taken the position that this case reaches most aspects of its
19 business, right. So in many ways it's unlike a lot of antitrust
20 cases or other litigation where you're dealing with a certain
21 aspect of the company's business --

22 THE COURT: Right. You're saying everything they do is
23 anticompetitive.

24 MR. DELL'ANGELO: Well, what we're saying is that the
25 anticompetitive scheme reaches many aspects of their business,

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1 whether it's merchandising, sponsorship, deals with television,
2 you know --

3 THE COURT: What else do they do?

4 MR. DELL'ANGELO: Well, they have gyms, for example.
5 They have -- you know, there are some other things that they do
6 that we don't have a great deal of insight into, but that, you
7 know, I'm not so sure that they're necessarily part of this
8 scheme.

9 But the point being, Your Honor, it's not the more
10 typical case where we can say, Give us the organizational charts
11 for Departments 1 and 2, you know, and we can work through that
12 issue. And, more typically, companies have organizational
13 charts that cover -- that are more reliable or that cover the
14 entire relevant time period. And it's particularly this absence
15 of these three years that give us great pause because you have
16 employees that have left that remain entirely unidentified.

17 And what we were trying to do is to do this once,
18 right, is to limit or avoid altogether the possibility of coming
19 back to you and saying, you know, We've agreed on X number of
20 custodians, we've had all of these documents produced, and now
21 we've determined that there are really five or six other people
22 from this historical period where the company didn't have
23 organizational charts and wouldn't provide us any information.
24 And now we need five more custodians, you know, and have that
25 discussion with you in six months or nine months because --

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1 THE COURT: If that happens, I would expect -- well,
2 you wouldn't have to be in front of me on that because they
3 would acknowledge that you need that information.

4 MR. DELL'ANGELO: Well, one would hope, Your Honor, but
5 given the process that has taken us here today, I'm not entirely
6 hopeful that that -- you know, or expect that that will be the
7 case, but --

8 THE COURT: There are a lot of arrows in my quiver for
9 people that obfuscate.

10 MR. DELL'ANGELO: Well, I guess, we -- I have great
11 pause, Your Honor, I mean, when we're being told today, you
12 know, that there is a universe of documents with potentially
13 relevant information that simply aren't going to be reviewed
14 when I don't have insight into who the universe of potentially
15 relevant custodians are. I mean, I have this fear that -- you
16 know, we're very much trying to move this case and keep it on
17 track.

18 There's quite a bit of frustration that you've got
19 requests that were filed -- were served in April. Discovery
20 stay that was denied in September. And, you know, I feel like
21 we really haven't even begun in many ways, and we'd like to
22 keep -- I mean, we have this schedule before you that's largely
23 agreed. We'd very much like to keep that as on track as humanly
24 possible. My sense is --

25 THE COURT: I'm going to be holding monthly status and

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1 dispute resolution conferences. And we're going to be dealing
2 with these without the necessity for formal motion practice and
3 deciding these things as we go so that, yes, that -- this is way
4 more time than most Federal Courts want to give you for this
5 type of a case, but there are limitations to what you can do
6 when you've been -- haven't made any progress so far.

7 MR. DELL'ANGELO: Okay. And I guess, lastly, I'd just
8 say, Your Honor, in the instances where what Zuffa has offered
9 to do is go back and research predecessors, that -- to people
10 who are on the organizational charts that we've identified,
11 that's helpful to a point. But, again, when there are
12 individuals who don't appear in those charts at all or there's
13 that three-year period where we have absolutely no information
14 at all, it leaves us in the position of not knowing whether
15 we've even identified, you know, the person for whom there may
16 have been a predecessor to ask --

17 THE COURT: Sometimes you get the best information out
18 of the people in the lower part of the food chains, yes. I
19 understand that part.

20 MR. DELL'ANGELO: Okay.

21 THE COURT: All right. Let me hear from Mr. Cove.

22 When can you get the additional information about the
23 additional custodians that have been requested from plaintiff?

24 MR. COVE: They requested that on November 6th, and I
25 think we can get it to them early next week.

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1 And I don't want to belabor the point, but what they've
2 asked for is information on every employee and every independent
3 contractor who worked for Zuffa from 2005. And the only
4 limitation that they've offered that I have seen is in the
5 status report where they say they don't want chefs, flight
6 attendants, or ring girls. So I think we have a universe here.
7 The idea that we haven't given them information before 2005 is
8 wrong. We've given them information about everyone's employment
9 history --

10 THE COURT: Right.

11 MR. COVE: -- back in time --

12 THE COURT: But you've also told them you can't -- you
13 can't tell them it's accurate.

14 MR. COVE: We -- well, we are -- we are doing the
15 research to see -- to make sure that we can -- you know, the --
16 these people are found on page 40, but they held various
17 positions. So what we're going to do is say, Okay. That person
18 was the senior manager at this time, but did he have a different
19 position? And we give the whole history of what those positions
20 were. And then if there's some gap for somebody who was
21 responsible for sponsorships, for example, who is not in here,
22 there's some gap in the time frame, we can research that as
23 well.

24 I mean, we're not playing hide the ball here and we're
25 perfectly willing to make sure they have a universe that is in

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1 the zone of people within this 50 people who have responsibility
2 that we have here so that they understand who those people were.

3 But to have a deposition on it now, it would be
4 burdensome --

5 THE COURT: I'm not going to order a Rule 30(b)(6)
6 deposition about discovery about discovery at this point, but
7 that will remain a possibility if I'm not persuaded that the
8 defendants are making good faith efforts to continue to
9 cooperate in identifying relevant custodians. I'll require you
10 to provide the additional information concerning the custodians
11 that plaintiffs have provided to you by next week. I'm going to
12 set this for a status and dispute resolution conference on
13 December the 8th at 1:45 in the afternoon, unless any counsel
14 whose presence is required cannot be available, so if you'd like
15 to consult your calendars.

16 You get Brownie points, Mr. Cove, for actually having a
17 physical calendar.

18 MR. COVE: I am old-fashioned. I can't visualize.
19 It is fine with the defendant.

20 MR. DELL'ANGELO: It is as well for the plaintiffs,
21 Your Honor.

22 THE COURT: All right, folks. So I'm going to leave
23 all afternoon just to deal with you and your issues and your
24 problems so that we'll take as long as it takes. And we are
25 going to make progress, and we are going to make the decisions

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1 as we go along. So I'll expect a joint status report --
2 December 8th, as I recall, is a Tuesday.

3 MR. COVE: Tuesday.

4 THE COURT: Tuesday? So I'll require you to provide a
5 joint status report by the prior Friday.

6 MR. COVE: We'll endeavor to make it shorter, Your
7 Honor.

8 THE COURT: Well, just keep in mind there are
9 limitations as to how much I can read in how much a period of
10 time. So that's fine. We're making progress, and we're going
11 to get these issues resolved as we go along.

12 And I'll see you next December 8th.

13 MR. COVE: Thank you, Your Honor.

14 MR. DELL'ANGELO: Thank you, Your Honor.

15 THE COURT: Thank you, counsel.

16 (Whereupon proceedings concluded at 10:08 a.m.)

17 --oOo--

18 I, Patricia L. Ganci, court-approved transcriber, certify
19 that the foregoing is a correct transcript transcribed from the
20 official electronic sound recording of the proceedings in the
21 above-entitled matter.

22

23 /s/ PATRICIA L. GANCI
24 Patricia L. Ganci

DECEMBER 2, 2015
Date

25